

ESTTA Tracking number: **ESTTA638576**

Filing date: **11/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Fitness EM, LLC
Granted to Date of previous extension	11/12/2014
Address	660 Douglas Street Uxbridge, MA 01569 UNITED STATES
Attorney information	John L. Welch Lando & Anastasi, LLP One Main StreetEleventh Floor Cambridge, MA 02142 UNITED STATES jlwtrademarks@lalaw.com Phone:617-395-7000

Applicant Information

Application No	86213291	Publication date	07/15/2014
Opposition Filing Date	11/12/2014	Opposition Period Ends	11/12/2014
Applicant	NBCUniversal Media, LLC 30 Rockefeller Plaza New York, NY 10112 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Educational and entertainment services, namely, a continuing program about fitness accessible by means of television, satellite, audio, video, web-based applications, mobile phone applications and computer networks; entertainment and educational services, namely, providing a website featuring videos and interactive content in the field of fitness

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3392283	Application Date	06/13/2005
Registration Date	03/04/2008	Foreign Priority Date	NONE

Word Mark	EMPOWER
Design Mark	EMPOWER
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2005/12/00 First Use In Commerce: 2005/12/00 DVDs featuring exercise instruction and routines; educational software featuring instruction in fitness training; pedometers</p> <p>Class 021. First use: First Use: 2005/12/00 First Use In Commerce: 2005/12/00 Plastic water bottles sold empty</p> <p>Class 028. First use: First Use: 2005/12/00 First Use In Commerce: 2005/12/00 Athletic, body building, physical fitness and exercise equipment, namely, abdominal exercise boards, weight benches, incline benches, weight lifting equipment and accessories, namely, barbell bars, barbells, dumbbell bars, dumbbells, hand grippers, resistance bands, jump ropes, head straps, exercise benches, personal exercise mats, weight plates and organizer for weight plates, dumbbell organizer; caddy that attaches to fitness equipment that holds water bottle and television remote control; exercise squeeze balls; stability balls; yoga mats and carry straps; yoga blocks; yoga straps; weighted balls; stair climbing machines; treadmills; stationary bicycles; elliptical machines; home gyms comprised of weight benches and weight training machines; ankle/wrist weights; and balance trainers, namely, balance boards and exercise platforms</p>

U.S. Registration No.	4118313	Application Date	08/02/2011
Registration Date	03/27/2012	Foreign Priority Date	NONE
Word Mark	EMPOWER		
Design Mark	EMPOWER		
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2005/11/23 First Use In Commerce: 2005/11/23 Providing a website featuring information and links relating to fitness and exercise</p>		

Attachments	76640728#TMSN.png(bytes) 85386828#TMSN.png(bytes) 86213291 Opposition.pdf(72206 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/johnlwelch/
Name	John L. Welch
Date	11/12/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:
Application Serial No. 86/213,291
Published in the *Official Gazette*
July 15, 2014

Fitness EM, LLC,

Opposer,

v.

NBCUniversal Media, LLC

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, FITNESS EM, LLC, a Massachusetts limited liability company having a place of business at 660 Douglas Street, Uxbridge, MA 01569, believes that it will be damaged by registration of the mark MPOWER10 shown in application Serial No. 86/213,291, filed by Applicant, NBCUniversal Media, LLC, and hereby opposes the same and requests that registration to Applicant be refused.

As grounds for its opposition, Opposer alleges that:

1. Applicant seeks to register the mark MPOWER10 for “Educational and entertainment services, namely, a continuing program about fitness accessible by means of television, satellite, audio, video, web-based applications, mobile phone applications and computer networks; entertainment and educational services, namely, providing a web

site featuring videos and interactive content in the field of fitness,” in International Class

41. Said application was filed on March 6, 2014, under Section 1(b) of the Trademark

Act, based on an alleged *bona fide* intention to use the mark in commerce.

2. Opposer is the owner of the following valid and subsisting trademark registrations on the Principal Register:

Reg. No.	Mark	Issued	Goods
3,392,283	EMPOWER	March 4, 2008	DVDs featuring exercise instruction and routines; educational software featuring instruction in fitness training; pedometers (Class 9). Plastic water bottles sold empty. (Class 21) Athletic, body building, physical fitness and exercise equipment, namely, abdominal exercise boards, weight benches, incline benches, weight lifting equipment and accessories, namely, barbell bars, barbells, dumbbell bars, dumbbells, hand grippers, resistance bands, jump ropes, head straps, exercise benches, personal exercise mats, weight plates and organizer for weight plates, dumbbell organizer; caddy that attaches to fitness equipment that holds water bottle and television remote control; exercise squeeze balls; stability balls; yoga mats and carry straps; yoga blocks; yoga straps; weighted balls; stair climbing machines; treadmills; stationary bicycles; elliptical machines; home gyms comprised of weight benches and weight training machines; ankle/wrist weights; and balance trainers, namely, balance boards and exercise platforms (Class 28).
4,118,313	EMPOWER	March 27, 2012	Providing a website featuring

			information and links relating to fitness and exercise (class 41).
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Pursuant to 15 U.S.C. Section 1057(b), each registration is *prima facie* evidence of the validity of the registered mark, of Opposer's ownership thereof, and of Opposer's exclusive right to use said mark in commerce in connection with the goods or services specified in the registration. Attached hereto are current printouts of information from the electronic database records of the USPTO (TESS and TSDR) showing the current status and title of each of these two registrations.

3. Since a date long prior to Applicant's filing date, Opposer has used the mark EMPOWER in connection with DVDs featuring exercise instruction and routines; educational software featuring instruction in fitness training; athletic, body building, physical fitness and exercise equipment; the provision of a website featuring information and links relating to fitness and exercise; and other related goods and services.

4. Through Opposer's substantial marketing and sales activities, which extend throughout the United States, and its extensive and continuous use of the mark EMPOWER, that mark has become a strong source indicator for the goods and services sold thereunder.

5. The services identified in Application Serial No. 86/213,291 are identical or closely related to the goods and services in connection with which Opposer has used and is using its trademark EMPOWER. In addition, on information and belief, Applicant's services would be offered to the same classes of purchasers who purchase Opposer's goods and services offered under the EMPOWER mark.

6. The applied-for mark in Application Serial No. 86/213,291 is substantially similar to Opposer's mark EMPOWER and is likely to cause confusion, mistake and

deception as to the source of Applicant's services, all to Opposer's damage. Given Opposer's long-established and extensive use of its mark, customers and potential customers are likely to believe that Applicant's services offered in connection with the applied-for mark, emanate from, are licensed by, approved by, or are otherwise associated with, Opposer. Any dissatisfaction with Applicant's services will adversely reflect upon and irreparably damage Opposer's reputation and goodwill as embodied in its mark.

7. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to use of the applied-for mark, which would be a further source of damage to Opposer.

WHEREFORE, Opposer requests that this Opposition be sustained and that the mark depicted in Application Serial No. 86/213,291 be refused registration.

FITNESS EM, LLC



Dated: November 12, 2014

John L. Welch
Lando & Anastasi, LLP
One Main Street
Cambridge, MA 02142
617/395-7072

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of November, 2014, a true copy of the foregoing NOTICE OF OPPOSITION was served by first-class mail, postage pre-paid on the following:

Tara Riley, Esq.
NBC Universal Media, LLC
30 Rockefeller Plaza
New York, NY 10112



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